WP(C) 7730/2004
BEFORE
HON'BLE MR. JUSTICE B.K. SHARMA

JUDGMENT AND ORDER

The petitioner, who was appointed as Typist on monthly contract basis on compassionate ground under the respondent No. 5, is aggrieved by dispensation of her service. Be it stated here that there is no written order towards dispensation of her service.

2. The father of the petitioner, while was serving as Driver in the office of the respondent No. 5 died on 6.3.1996. Considering the plight of the family, the petitioner, his daughter was appointed as aforesaid by Annexure-I order dated 25.3.1996. It was indicated in the order that her such appointment was on compassionate ground till such time a clear decision was received from the higher authority against the vacant post of LDC of Agartala Sub-division.

3. In response to the said offer, the petitioner joined the service as Typist and as per the statements made in paragraph 4 of the writ petition she continued in her service for long 4 years up to 31.3.2000. She was appointed in the time scale of pay of Rs. 950+ DA in the pay scale attached to the post of LDA i.e. Rs. 950-1500/- According to the petitioner her service on monthly salary in the time scale was dispensed with from 1.4.2000 and instead she was paid consolidated amount of Rs. 800/900/- per month from April onwards.

4. The writ petition was filed on 6.10.2004 and as per the statements made in paragraph 7 of the writ petition, she was still continuing in her service being engaged in various jobs. According to the petitioner, she having continued in the service for long 8 years (by now 11 years), she is entitled to get regularization of the service or atleast temporary status in terms of the Scheme for Grant of Temporary Status and Regularization of Casual Workers formulated by the Government of India in the Department of Personnel & Training and circulated vide OM dated 10.9.1993 effective from 1.9.1993 (Annexure-III).

5. By Annexure-IV letter dated 14.1.1999 issued from the office of the Director General, All India Radio and addressed to all Heads of AIR stations/offices, it was emphasized that action in terms of the said OM should be taken. For a ready reference, the letter dated 14.1.1999 is quoted below:

PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
DIRECTORATE GENERAL; ALL INDIA RADIO
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No. 4/8/98-SVI/ New Delhi, Dated 14.1.99

Subject: Regularisation of casual workers/grant of temporary status.

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It has been brought to the notice of this Directorate that casual workers engaged at some of the AIR Stations/Offices, inspite of fulfilling the prescribed eligibility criteria, are neither granted temporary status nor considered for regularisation of their services. Attention in this connection is invited to Deptt. Of Personnel & Training OM No. 51016/2/90-Estt (C) dated 10th September, 1993, copy enclosed for ready reference. All Heads of Stations/offices are requested to grant temporary status and consider regularization of services of eligible casual workers who fulfill the prescribed conditions in accordance with DOF&T dated 10.9.93.

(Sd/-
N.C. Gaur
Dy. Director of Admn, (G)
For Director General .

6. By Annexure-V letter dated 23.12.1997, the respondent No. 5 sought for the approval of the authority for the purpose of accommodating the petitioner on compassionate ground against the vacant post of LDC in AIR Silchar. It was indicated in the letter that there was another vacancy of LDC at Agartala. The petitioner also made several representations for her regular appointment on compassionate ground, however, nothing having materialized, she approached the Central Administrative Tribunal by filing the Original Application being O.A. No. 124/2001 making a grievance against the inaction of the respondents.

7. The respondents filed their written statement in the aforesaid proceeding before the Tribunal. In paragraph 10, it was admitted that the petitioner was paid salary on monthly basis in the initial of the time scale of pay of Rs. 950 + DA. It was further stated that the same amount was being paid to the petitioner from April 2000 onwards. In paragraph 11 of the written statement, the respondents stated that her services were utilized as and when there was requirement. Contrary to this position relating to two vacancies of LDC as indicated in the aforementioned letter dated 23.12.1997 (Annexure-V), it was stated in the written statement that there was no post of Typist in the Department.

8. In paragraphs 12 and 15 of the written statement, the respondents stated that the petitioner was engaged on casual basis to give her instant relief after her father’s death on humanitarian ground. It was also stated that her case would be considered at the appropriate time by the competent authority.

9. The O.A. was disposed of by judgment and order dated 1.1.2002. The operative part of the judgment is quoted below:

4. On perusal of the written statement it appears that the case of the applicant is under consideration before the authority for appointment on compassionate ground. The posts are limited under the Recruitment Rules. Only 5% of the total vacancy in the Department are earmarked for appointment on compassionate ground. Appointment on compassionate ground is made as per the norms on the basis of the seniority. The action taken by the respondents cannot be said as arbitrary. According t the respondents also, the case of the applicant is under consideration and she is in the waiting list for appointment n compassionate ground and would be appointed against the future vacancies. Presently the respondents are utilizing the services of the applicant on daily wages basis to which also indicates the anxiety of the respondents to extend all possible assistance to the deceased family. In this circumstances, we do not find any illegality on the part of the respondents. It is expected that the respondents shall take up the case of the applicant for appointment on compassionate ground in due time against vacancies and she will be duly absorbed against any vacancy in due course.

10. According to the petitioner she was entitled to receive salary in the corresponding revised scale of Rs. 3050-4590/- made effective from 1.1.1996, but instead, she was being paid salary in the pre-revised scale of Rs. 950/- + DA. Further, she was also deprived of her DA with effect from 1.4.2000. In paragraph 14 of the writ petition, the petitioner has stated that similarly situated employees even with lesser number of years of service to their credit have been regularized in their services to the exclusion of the petitioner.

11. In paragraph 17 B of the writ petition, the petitioner has stated about the manner of dispensation of her service in October, 2004 i.e. after filing of the writ petition. According to her, on 14.10.2004, the respondent No. 7 calling

her to his chamber hurled abuses being annoyed of filing the writ petition. He asked her not to come to office and offered her Rs. 500/-. Faced with such humiliation, she submitted Annexure-XII representation dated 17.11.2004 to the respondent No. 5. According to the petitioner prior to making the representation, she had been attending the office regularly but was assigned no work.

12. By Annexure-XIII letter dated 10.12.2004, the respondent No. 5 intimated the petitioner that her services were utilised on casual basis upto 31.3.2000 and thereafter she has not been engaged at all and thus there was no question of any misbehaviour to her on 14.10.2004 and also her non-engagement. It was further intimated that her claim for service was subjudiced and accordingly no further correspondence would be made to her. This letter was followed by the Annexure-XIV order dated 17/12.12.2004 issued by the Security Officer furnishing the instruction that no person would be allowed to enter into the office premises without having genuine purpose. According to the petitioner, the order was issued only to enforce restriction of her entry into the office.

13. It is in the aforesaid back drop the petitioner has agitated her grievance relating to her disengagement and discontinuation of service, although she was appointed on compassionate ground. The respondents have filed their counter affidavit. In paragraph 3, it has been admitted that the petitioner was appointed on compassionate ground till such time, a clear decision was received from the higher authority, against the vacant post of LDC in Agartala Sub-division. As regards the claim of the petitioner for granting of temporary status, it has been stated that in absence of any sanctioned post there is no question of conferring the petitioner temporary status. However, it has been stated that her case would be considered as and when her turn would come for appointment on compassionate ground against the quota earmarked for the same.

14. The respondents have filed an additional affidavit and in paragraph 5, it has been stated that the petitioner had worked only upto 31.3.2000 and thus, there was no question of meting out to her any misbehaviour and/or her disengagement on 14.10.2004. According to the respondents, on that day, the petitioner had met the respondent No. 7 and requested for assignment of work as she was facing financial hardship to which the said respondent replied to her that it was not possible to engage her on casual basis as per strict instruction of the higher authority. Significantly, in this affidavit, the respondents have annexed the copy of the OM dated 5.5.2003, as per which a case for compassionate appointment will remain under consideration for a maximum period of 3 years.

15. I have heard Mr. M. Chanda, learned counsel for the petitioner as well as Mrs. G. Singha, learned CGSC representing the respondents. During the course of hearing of the writ petition, it was felt necessary to have the records of the case indicating consideration of the case of the petitioner and her position in the list of compassionate appointees. Accordingly order was passed on 22.6.2007 upon a reference to the stand of the respondents in the proceeding before the Tribunal, according to which the case of the petitioner was to be considered at the appropriate time.

16. Learned CGSC although produced certain purported records/ documents, same being not in conformity with the order dated 22.6.2007, her prayer for further time was granted enabling her to produce the records. As regards the contradictory stand of the respondents in respect of engagement of the petitioner beyond 31.3.2000 also, the learned CGSC was requested to obtain instruction. However, she could not produce any further records nor she could furnish any clarification on the own contradiction of the respondents in which in one hand they have stated that the petitioner was allowed to continue after 31.3.2000 but on the other hand, they have contended in this proceeding in reference to the incident dated 14.10.2004 that the petitioner was not in service after 31.3.2000.

17. Such stand of the respondents in their additional counter affidavit as well as in the letter dated 10.12.2004 (Annexure-XIII) is belied by their own stand in the proceeding before the Tribunal. In paragraph 10 of the written statement (filed on 26.9.2001), they stated thus:

10. That with regard to the statement made in para 4.7, the respondents state that the applicant was paid on daily wage basis as per the Minimum Wage Act of the State Government, she has never been paid on monthly basis at the rate of Rs. 950/-+ DA. The daily wages was calculated on the basis of Rs. 950+DA. The same amount on lump sum basis is being paid from April, 2000 onwards.
(Emphasis added)

18. Similarly, in the judgment of the Tribunal delivered on 1.1.2002 also there is mention of continuation of her service beyond April, 2000. Further, contrary to the stand in the additional affidavit, the respondents in their main affidavit filed on 28.12.2004, have not denied the continuation of the services of the petitioner beyond March, 2000. In the writ petition, the petitioner has stated about her continuation in service upto 31.3.2000 with the monthly pay of 950/- + DA and thereafter on consolidated pay of Rs. 800/900/-. She also made an interim prayer not to dispense with her services. Such stand of the petitioner has not been denied in the main affidavit. In response to the statements of the petitioner in paragraph 8 and 9 of the writ petition to the effect that she has been working for more than 8 years from 1996, the respondents have stated in paragraph 5 as follows:
The deponent states that mere working for 8 years and/or for that matter having worked for 206/240 days every year would not entitled the writ petitioner for grant of temporary status. The Department being sympathetic had been supporting the writ petitioner and placed her case in the waiting list by paying wages etc. for miscellaneous works of the office.

19. In paragraph 6 of the main affidavit, the respondents have stated that the writ petitioner is paid as per financial sanctions against wage based workers of the Department.

20. From the above materials, there is no manner of doubnt that the petitioner, in whatever form, was in the employment of the respondents till filing of the writ petition on 6.10.2004. It is in reference to this, her plea regarding dispensation of service with effect from 14.10.2004 by the respondent No. 7, which fact has been brought on records by bringing amendment to the writ petition will have to be considered. The simple plea of the respondents is that since the petitioner was not in service on 14.10.2004, there was no question of misbehaving with her and/or dispensation of her service. When the respondents, all along admitted continuation of services of the petitioner even upto the stage of filing the main affidavit on 28.12.2004, it is not understood as to how, later on, the same very respondents could take such a plea.

21. The plea of the petitioner that she was hurled with the abuses on 14.10.2004 by the respondent No. 7 being annoyed of filing the writ petition and that she was not allowed to attend duties thereafter finds support from the falsehood to which the respondents have taken recourse to in their additional affidavit as well as in Annexure-XIII letter of the writ petition dated 10.12.2004. Both, the letter and the additional counter affidavit are subsequent to 14.10.2004.

22. It will be pertinent to mention here that it is one Mr. R.C. Das, the Executive Engineer, who is the respondent No. 5 had issued the Annexure-XIII letter dated 10.12.2004 and has also filed the main affidavit as well as the additional affidavit. In the letter dated 10.12.2004, the said Executive Engineer stated about the purported intimation furnished by the Sub-divisional Officer, AIR, Silchar, who incidentally is the respondent No. 7. This has been repeated in the additional affidavit filed by said Sri R.C. das, unmindful of the fact that he in

the main affidavit never denied continuation of services of the petitioner beyond March, 2000 and rather admitted the same as discussed above.

23. Above is a matter of serous concern. The respondents instead of being a model employer have taken recourse to falsehood. Tested in this touchstone, the specific plea of the petitioner with narration of the incident on 14.10.2004 will have to be accepted. This being the position, the case of the petitioner for continuation in service either on regular basis or on casual basis with temporary status will have to be considered.

24. The petitioner was appointed, admittedly, on compassionate ground. In the order of appointment apart from mentioning the same to be on contract basis, no duration of the same was indicated. By Annexure-V letter dated 23.12.1997, the respondent No. 5 intimated the authority about 2 vacancies of LDC one lying at Silchar and another at Agartala, against the quota earmarked for compassionate appointment. The petitioner was appointed by order dated 25.3.1996 on contract basis till a clear decision was received from the higher authority against the particular vacant post. There is nothing to indicate that the case of the petitioner was considered against that particular vacancy or against the vacancy at Siclhar.

25. If the petitioner was to continue in her contractual service till such time a decision was received from the higher authority, it is not understood as to how her services could be dispensed with without any decision from the higher authority. This is another aspect of the matter, which will have to be kept in view in accepting the claim of the petitioner that she was in service even on 14.10.2004.

26. During the course of hearing, Mrs. G. Singha, learned CGSC produced certain photocopies including the purported list of applicants for appointment on compassionate ground for Group-C post showing the name of the petitioner at serial No. 7. According to her no appointment having been offered to any one after her, the petitioner cannot claim any preferential treatment. This Court considering the stand of the respondents that the name of the petitioner is in the waiting list and that her case would be considered as and when her turn would come directed the respondents to produce the relevant records including the records indicating consideration of the case of the petitioner. The direction was issued by order dated 22.6.2007 considering the own stand of the respondents in the proceeding before the Tribunal that the case of the petitioner would be considered for compassionate appointment at the appropriate time.

27. Pursuant to the aforesaid order, Mrs. G. Singha, learned CGSC produced certain documents, not in original and not even photocopies of the originals. Realizing the true purport and import of the order dated 22.6.2007, she expressed her helplessness and prayed for further time to produce the records in originals. She was also requested to clarify the contradiction relating to continuation of services of the petitioner beyond March, 2000. However, neither the records in original nor the clarification sought for could be furnished by her on the next date of hearing i.e. 30.8.2007. She produced the same very list, a typed copy, which was earlier produced. Had the relevant file, in which the case of the petitioner was processed been produced, the stand of the respondents regarding consideration of the case of the petitioner could have been appreciated. However, unfortunately, the respondents have chosen not to produce the relevant file for the reasons best known to them.

28. The petitioner was appointed on compassionate ground. There is no dispute that at that relevant point of time there were two vacancies of LDC. The respondent No. 5 by his Annexure-V letter dated 23.12.1997 intimated the authority about the said position with the request to accord necessary approval for appointment of the petitioner against the quota earmarked for compassionate appointment.

In the proceeding before the Tribunal, the respondents denied the appointment of the petitioner on compassionate ground unmindful of the fact that the very order of appointment of the petitioner indicated ground of appointment as compassionate. In the written statement filed before the Tribunal, the respondents stated that the case of the petitioner had been recommended to the competent authority for appointment on compassionate ground as LDC. It was also stated that she was engaged on contractual/casual basis to provide instant relief in view of death of her father. It was further stated that her case would be considered at the appropriate time by the competent authority.

29. From the above narration of facts, what has transpired is that as per the own admission of the respondents, the petitioner was in service beyond March, 2000. But in the additional affidavit they took altogether a different stand stating that the petitioner had worked only upto 31.3.2000. This aspect of the matter has been discussed above in detail. In fact the respondents are guilty of suppression of material facts and/or falsification of actual state of affair. It is in this context, the incident of 14.10.2004, from which date the petitioner has been debarred from entering into the office will have be considered and understood. This aspect of the matter has also been discussed above.

30. The competent authority by its Annexure-IV letter 14.4.1999 emphasized the need for regularization of the services of casual workers in terms of the aforementioned Scheme for Grant of Temporary Status and Regularization of Casual Workers. As per the said scheme, a casual worker who was in employment on the date of issuance of the OM and had rendered 240/206 days depending upon number of working days in a week is to be conferred temporary status entailing certain benefits with future benefit of regularization of service. The scheme came into effect from 1.9.1993.

31. Mr. M. Chanda, learned counsel for the petitioner referring to the aforesaid scheme has argued that even leaving aside the injustice done to the petitioner towards dispensation of her service, which was admittedly provided to her on compassionate ground, the petitioner is also entitled to the benefits envisaged in the said scheme. On the other hand Mrs. G. Singha, learned CGSC has argued that the said scheme is not applicable to the petitioner, she being not a Group-D casual worker. Strictly speaking, the scheme may not be applicable to the petitioner not because the petitioner was not a Group-D casual worker. The scheme came into effect from 1.9.1993 and was made applicable to casual workers in employment on the date of issuance of the OM. The petitioner being in casual employment after the effective date, strictly speaking the said scheme may not be applicable to her. However, the principles underlying ought to have been followed by the respondents before dispensing with the services of the petitioner in the manner and method in which the same was done.

32. The petitioner continued for long 8 years in the services of the respondents. Even in the appointment order, there was no indication of any duration of her contractual appointment on compassionate ground. It was only on 14.10.2004, her service was dispensed with in the manner and method indicated above. The respondents apart from taking recourse to falsification of truth have also withheld the relevant file in which the case of the petitioner was purportedly considered.

33. During the course of hearing, Mrs. G. Singha, learned CGSC upon a reference to Annexure-AR/1 OM dated 5.5.2003 annexed to the additional affidavit contended that the case of the petitioner cannot be considered for compassionate appointment since the stipulated period of three years has expired. Apart from the fact that the said OM cannot have any retrospective application, the respondents in their affidavit filed on 28.12.2004 did not take the said stand, although the OM was very much available. Their only contention was that the case of the petitioner would be considered. Now being confronted with the aforesaid incident of

14.10.2004, the respondents have taken shelter under the said OM.

34. The purpose of providing appointment on compassionate grounds is to miti gate the hardship due to death of the breadearner in the family. Such appointmen t should, therefore, be provided immediately to redeem the family in distress. I n fact, the petitioner was provided with compassionate appointment and perhaps s he would have continued in her service but for the incident on 14.10.2004. The o bject to provide compassionate appointment is to give succour to the family whic h has been suddenly plunged in to penury due to the untimely death of its soul b readwinner. While it is true that there cannot be endless compassion , as has b een contended by the respondents, but the instant case is not of that nature. Th e petitioner was provided with compassionate appointment, may be on contractual basis in the monthly salary of Rs. 950+DA. Her such appointment was also not for any limited duration. There was change in pay structure. In the first affidavit filed by the respondents, it has been admitted that the petitioner continued in her service for 8 years, however, in the additional affidavit, altogether a dif ferent stand has been taken stating that the petitioner was not in service after 31.3.2000. Thus, the petitioner having been provided with compassionate appoint ment at the appropriate time, such appointment ought to have been continued with consideration for regularization of the same.

35. The respondents instead of acting as a model employer have even gone to the extent of making false statements as indicated above. They have also not pro duced the relevant file, inspite of calling for the same. Coupled with this, the manner and method in which, the services of the petitioner has been dispensed w ith leads to the irresistible conclusion that the case of the petitioner has not been considered by the respondents, as was required to be considered. As per th e Annexure-V letter dated 23.12.1997, there were two vacancies of LDC, one at Ag artala and another at Silchar, in the list of applicants for compassionate appoi ntment, there is no indication that the said two posts have been filled up. Ther e is also no indication of consideration of the case of the petitioner against a ny one of the said two vacancies, for which the respondent No. 5 had emphasized by his aforesaid letter of 1997.

36. From the materials on record, what has transpired is that although the p etitioner was provided with compassionate appointment to mitigate the hardship, which had fallen on the family on the death of her father during employment. Sam e was on contractual basis and she continued for long 8 years. There is nothing to show that the case of the petitioner was considered against the said two vaca ncies with due earnestness. After keeping the case of the petitioner pending for long 8 years, the respondents unfortunately have taken recourse to the aforesai d OM dated 5.5.2003 unmindful of their own commitment furnished both before the Tribunal and this Court. The order dated 25.3.1996, by which the petitioner was appointed has also not been withdrawn and/or cancelled. There is also no written order terminating the services of the petitioner. It cannot be said to be a cas e of endless compassion as has been sought to be contended by the respondents.

37. It is in the above context, the principles underlying the aforesaid sche me of 1993 will have to be considered. The petitioner is the daughter of a Group -D employee (Driver) who died while in employment. It is the own case of the res pondent that the petitioner was provided with employment to provide immediate re lief. After getting the employment and managing the family with the meager salar y for long 8 years, it can very well be imagined as to what could be the plight of the petitioner and her family upon dispensation of her service. The responden ts have dispensed with the services of the petitioner in the manner and method d iscussed above, which do not behove of a model employer considering the case for compassionate appointment.

38. For all the aforesaid discussions, reasons and conclusions, I am of the considered opinion that the petitioner is entitled to a fair consideration of th

e respondents for continuation of her service with eventual regularization. Cons equently, the impugned action of the respondents towards dispensation of her ser vice is interfered with, being not tenable in law. The respondents cannot take t he plea of endless compassion , they themselves having acted in the manner indi cated above and having kept the case of the petitioner in endless oblivion.

39. The writ petition is allowed, the petitioner shall be taken back in serv ice forthwith and thereafter her case for regularization of service shall be con sidered in accordance with law.